THE LEARNED Readings

OF

Robert Holbourne, Esq;

UPON

The Statute of 25 *Ed.* 3. *Cap.* 2.

being the Statute of

Treasons.

Delivered in *Lincoln's-Inn*, Feb. 28. 1641.

WHEREIN

The whole Argument is fully comprehended, in three *LECTURES.*

Indici conjurationis præmia constituta.
Salust. in Conjur. Catil.

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THE LEARNED Readings OF *Robert Holbourne*, Esq;

Lecture I.

BEfore the Statute, Treſpaſſes were made Felonies, & Felonies were made Treaſons; and we could

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not judge which were Felonies, and which were Treasons, but it did rest in the breast of the *Judges* that were in those days. For the preventing of which mischief, this Statute, which I now Read upon, was made, which hath two Parts: A Declarative part; and that doth declare what shall hereafter be judged Treason: And Treason also is commonly divided into two parts; that is,

The parts of the Statute are first Declarative.

High Treason.

First, *High Treason*, that is, against the Person of the King; and that will fall out for this days Work. Secondly, *Petty Treason*, which is in the latter part of the Statute,

Petty Treason.

tute, as will appear hereafter.

The ſecond part of this Statute is the Dejective part, and directs the *Judges* how far to proceed upon a Fact that is not within the Statute. And ſecondly Dejective High Treaſon.

High Treaſon is againſt the perſon of the King, or againſt his Government, *viz.* as againſt his *Judges*, *Seals*, and *Coyns*. Theſe are the Diviſions that I ſhall make of this Law.

The definition of Treaſon.

It is *Leſa Majeſt.* which comprehends the Perſon of The definition of Treaſon.

the King, and his Officers o
Juſtice. For the Perſon o
the King and the Treaſon
that are committed more im
mediately againſt his Perſon
and they are *Acts* and *Per*
ſons.

Perſons, they are of tw
ſorts; *Perſons* againſt whom
and the *Perſons* by whom
theſe *Treaſons* are committed
The *Acts*, and they are di
vers.

As firſt, *Compaſſing th*
Death of the King: And fo
explanation of this word
Compaſſing, it is an old word
ſignifying not a bringing to
paſs only, but a *going about*
as you ſhall find it in *Britton*
and

and the *Mir. of Juſt.* but it is ſince called in *Latine Machinatio*, and a *going about*, or *compaſſing* is Treaſon, though no effect do follow; as a *compaſſing* to kill the King, though he be not kild; ſo a *compaſſing* without any other Act is Treaſon: But there may be an Act done that doth effect the death of the King, and yet no Treaſon, if there be no *compaſſing*: as in the Caſe of Sir *Walter Terril*, who ſhooting at a Deer, his Arrow glanced againſt a Tree, and ſtruck King *William Rufus* upon the breaſt that he died: and this was not Treaſon, becauſe there was no

1 Mar. Bro. tit. Treaſ. 24.

Hollingſhead.

compaſſing. And ſo it is in the Caſe of a Phyſitian, as if the King takes Phyſick and dyes of the Phyſick working, yet if it be not notoriouſly groſs, and it doth not appear that he did any way *compaſs* the Death of the King, this is not treaſon within this Law; for in the Caſe of a common perſon, if a Phyſitian give one Phyſick, whereof he dyes, this is not Felony in him, although the Phyſitian had no Licenſe to practice Phyſick; for it is his fault that he will take Phyſick of him; and *volenti non fit injuria*. If the Prince in perſon aſſaults a man, and drives

drives him ſo hard againſt the Wall, that if he do not defend himſelf he will kill him, and he cannot do it without danger to the Prince; in that Caſe he ought not to defend himſelfe, but ought rather to dye than hazard the perſon of the Prince, becauſe he is *Caput & ſalus Reipub.* and yet Nature doth teach a man to defend himſelfe againſt all danger. And thus much for *Acts* without *compaſſing*. And yet ſome of theſe *Acts* that are without *compaſſing* are left to the Jury to judge of, and ſome others are left to the Judges to judge of, as by preſumption of Law;

Law; as in *Murder*, there ought to be malice fore-thought, and yet if an Officer, in executing of his Office be ſlain, this is Murder by the Law, and yet in this Caſe there do not appear any malice fore-thought, and ſo in this Caſe the Law makes an Evidence for the Jury, and ſo in deeds of the like Caſes.

The ſecond Act is *Violating*; and this word is derived of *vi perdendo*, but yet it may be done without any force at all.

The third *Act* is *Levying War againſt the King:* And what ſhall be ſaid of *Levying War*? that may be divers ways,

ways; As if the Inhabitants of a Town will gather themſelves together to pull down the Fences of a Common, in which they have no Intereſt or Common, nor ever had, this is Treaſon within this Law; but if they had an Intereſt or Common there, then it is no Treaſon: but if they ſhall do it by Force of Arms in a War-like manner, *Qu.* but in the firſt Caſe it is a *Levying of War againſt this Government.*

See *Saint John's* argument in *Sherly* of *Sheffield's* Caſe.

Another *Levying of War* may be againſt the King, as if it be to the diſplacing of his Officers, as in the Earl of *Eſſex* his Caſe, in his coming

Nota.

ing to the City of *London*, for to remove Officers that were about the Queen, this was Treaſon: and ſo it is alſo to the ſame purpoſe in 1 *Mar. Dyer* 24. and ſo it appears, *A man may Levy War againſt the King, although he hath no intent to meddle with the perſon of the King, or any way to hurt him*; and ſo you ſhall find alſo in *Bro. Tit. Treaſon* 14. *And if any Levy War without the King, this is a Levying of War within the Law*, 8 H. 8. If two conſpire to *Levy War*, and one alone doth it, this is Treaſon in both.

1 *Mar. Dyer* 24.

Brok tit. Treaſon 14.

8 *Hen.* 8.

The fourth part is to *Adhere*

here to the King's Enemies; and firſt, who ſhall be ſaid to be *Enemies within this Law.* Secondly, who ſhall be ſaid *Adhering to them that are Enemies within this Law.* This word *Enemy* cannot extend to Subjects, for they are Rebels and no Enemies, and ſo it is expreſt in the *Iriſh* Statutes: and this Statute cannot be taken according to *Equity*, for it is a *Penal Law*, and of the greateſt penalty that is; and therefore the *aiding of Rebels cannot be meant any way the aiding of the King's Enemies within this Law.* Aiding the Enemies within or without is an aiding

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See *Iriſh* Statutes.

ing of thoſe that come into the Land, or of thoſe that are without. A Subject is of two ſorts, *ratione originis*, and a Subject *ratione loci.*

Subjects two ſorts.

1. *Ratione originis.*

A Subject *ratione originis*, cannot be an Enemy, although he doth Levy War (in reſpect of his Obedience) but a Rebel he ſhall be.

2. *Ratione loci.*

A Subject *ratione loci*, during his reſidence here, he can be no Enemy neither, but if he goeth over Sea, and then Levy War againſt this Kingdom, or any other of his Majeſties Kingdoms, he is then an Enemy within this Law, and no Rebel.

Dominium duplex.

There is alſo *Dominium rectum*,

rectum, & Dominium utile, for if a man be born within the *Dominium rectum*, as that of *Scotland* in ancient time, and there he Levy War, he is an Enemy and no Rebel: but if he be born within the *Dominium utile*, and Levy War, he is a Rebel, and not an Enemy.

Aiding, is by ſending them Aid, as of Victuals, or of Weapons, and the like, by giving of them Counſel, or by any other way, whereby they may receive ſtrength or comfort from him.

Now for the perſons by whom this *Levying of War* may be, and as to that *all Levies*

Levies are within this Law, as well Women as Men, for Women are comprehended under this word *Man*.

Secondly, *Perſons of all Nations*, that are within this Land, are within this Law; for as they ſhall have protection by the Laws of the Land, ſo they ought at their peril to take notice of the Law, ſo ſoon as they come into the Land; for they ought to have notice given them, and cannot alledge ignorance if it be not given them; eſpecially in ſuch Laws as this, that are ſo beneficial both the King and Kingdom.

Thirdly, *Perſons of all Degrees*,

grees, as a Queen that is married to the King attempting the death of the King, is within this Law. A Forreign Ambaſſador is alſo within this Law; but if a Foreign King ſhould come into this Land, by Licenſe, and here *compaſs* the death of the King, the queſtion will be how he ſhall be tried? for, he is a King here, and therefore ought to be tried *per Pares*, which he cannot be, for other Honours are not allowed here.

Fourthly, all Ages are within this Law, as in Folks which have knowledge, or men of *non ſanæ memoriæ*, and

a mad man is alſo within this Law, as to that part of the Statute which concerns more immediately the Perſon of the King; for if any of them afore mentioned in this diviſion ſhall *compaſs* his death, it is Treaſon within the firſt Clauſe, but not in the Clauſe of *Levying War*, as I ſhall ſhew you afterwards: but a man that is *ſurdus, cæcus & mutus*, is not within this Law, for it is impoſſible for him to have underſtanding.

Now for the perſons againſt whom; a King before his Coronation is within this Law, as it is in the Duke of *Northumberland's* Caſe, for he is

Northumberland's Caſe.

is presently a King, as soon as the other King deceaseth, and there is no *Interregnum*; for the King, *quatenus* a King, never dieth, but he is said to Demise, when he departs this Life; and the King is Crowned because he is a King, and not a King because he is Crowned; a King *de facto*, and not *de jure*, is a King within this Law; as it is in 4 *E.*4.1. and 9 *E.*4.12. A King conjugal or marital, that takes to Wife the Queen of *England*, is within this Law; a Queen that is married, although the marriage be void, yet that Queen is within this Law; so is a Queen married

See 4 *E.*4. 1. 9 *E.*4.12.

by *Proxy*; a Queen within Age is also within this Law.

The first Case.

First Case. *I. S.* after the Divorce of the Wife of the Grandchild, and Heir apparent to the Queen, doth violate her, and imagine the Death of the husband, and declares this to *I. D.* and after kills the husband of the Queen, and conspir'd to *Levy War* against the Queen, and delivers to *I. D.* money to buy Arms, and after becomes mad, and Aids the Enemies of the Queen within the Realm, and then kill the Queen.

The

The Concluſion is, Firſt, *I. S.* is a Traytor within this Law, for killing the Huſband of the Queen, and for conſpiring to Levy War, and for killing of the Queen, and in every one of theſe.

The ſecond Concluſion is, that *I.S.* is not a Traytor within this Law, for imagining the death of the Grandchild; and yet he is within the Caſe of the Law, not for violating of his Wife, nor for aiding of the Enemies.

I. S. is a Traytor within this Law, for killing the huſband of the Queen, but not within theſe words, *That whoſoever ſhall conſpire or compaſs*

the death of the King; for as to that Clauſe he is not *King*, for the *Queen* is Regent, and not he, and ſo not within that Clauſe, nor the meaning of it, but he is within this word *Companion*; for he is as good a Companion to the Queen, as the Queen is to the King; and ſo within the ſame Reaſon of Law: For the husband of the Queen, in ſuch a Caſe, is in a better condition and plight than a Queen to a King, and ſo upon a ſtronger Reaſon; but this you muſt take as a Rule that I have ſaid before, *viz.* that this Statute is not to be taken by *Equity*; and this you ſhall find as another

other Rule, as well for the expounding this Statute as any other: that thoſe Caſes that ſtand upon the ſame Reaſon ſhall be within the ſame Law, although not taken by *Equity*; for where there is the ſame identity, parity or majority of Reaſon in any Caſes, there ought to be the ſame Law; as it is in the Statute of *Glouceſter* concerning Waſte, and in this our Statute, the myſteries are not named; yet there is within this Law, for if the Servant kills the Wife of his Maſter, knowing her to be his Maſters Wife, this is adjudged *Petty Treaſon* by the Judge-

Bro. Treaſ. for. 12. 12. aſſ. pl. 30.

ment of all the Judges of both *Benches*, 19 *H.* 6. 47. *Com.* 87. 6. *Fitz. Com.* 7. 118. *Brook tit. treaſ.* 8. For as well the Miſtreſs as the Maſter hath affiance in him, and he ought to give Reverence to his Miſtreſs as well as his Maſter, and yet the Maſter is only named in this Statute; but in our Caſe, the expreſs words are, *That if any man ſhall Compaſs the death of the Kings Companion, it ſhall be Treaſon*; and ſo there is an expreſs *proviſo* for him, being the *Companion*; for he is a *Companion* to the Queen. A ſecond Difference between our Caſe, and the Caſe of the Miſtreſs,

ſtreſs, is, that ſhe is his Miſtreſs, but *gratia*, and under the power of her Husband; but in our Caſe the King marital hath a Superiority over his Wife, as he is her Husband; and ſo our Caſe is a farre ſtronger Caſe.

If a Child kills his Father, or Mother, this is *Petty Treaſon*; and ſo it was alſo at the Common Law, before the making of this Statute, 21 *E.* 3. 17. *Bro. Tit. Sanct.* 2. and *Bro. Tit. Treaſ.* 6. becauſe there is a higher majority of Reaſon than that of a Servant, which is the Reaſon of the Submiſſion and Duty that is to the Father and Mother from the Child,

21 E. 3. 17 *Bro. tit. Sanctuar.* 2. *Bro. tit. Treaſ.* 6.

Child, and where there is a majority of Reaſon, or a parity of Reaſon for the one Caſe as there is for the other, there is always the ſame Law.

1 & 2 Ph. & Mar. c. 9.

But you will *Object*, there is a Statute made 1 & 2 *Phil. & Mar. cap.* 9. that if any ſhall imagine the death of the King, that it ſhall be Treaſon; and therefore he was not provided for before this Statute, and therefore this Statute was made: if it were Treaſon before this Statute, then this Statute was made in vain and to no purpoſe.

Anſw. That that Statute doth provide as well for the preſervation of the Queen, as for the

the King, and makes it Treason for any to *compass* the death of the Queen, and therefore it cannot be concluded from thence, that it was not Treason to *compass* her death before that Statute. The second Reason is, because that Statute doth provide for other matters, as it doth there appear.

The next Point is the declaring of this his imagination to *I. D.* which is an Overt Act; for an overt Act is the declaring of his Mind and Intentions to others, by such words as imply an Act to follow, or by bidding a man to do what he hath intended, or to do any thing that may tend to his

1 *Mar. Brooke tit. treas.* 24. The second point

his purpoſe, or by writing, to declare his mind: but if a man have a thought of Killing the King, this is onely *Primus motus*; and although he afterwards tells another, that he had ſuch a thought, this is no Overt Act; but if he doth cheriſh this thought, then it becomes his own, and then he tells it to another, that he hath ſuch an intention, this is an Overt Act; for the words he doth ſpeak, are words *executory*, and imply that he will do ſuch an Act: Or if *A.* conſpire with *B.* to kill the King, this is an Overt Act; but to imagine with himſelf is not, becauſe it can-

not

not come to be known: words of encouragement to others is an Overt Act alſo.

For *conſpiring to levy War*, is the next, and this is Treaſon within this Law, although it be not within the words of the Statute; but yet it is within the meaning and reaſon of the Statute: for how is it poſſible for any to Levy War, but he muſt conſpire the death of the King, or his depoſing at leaſt? and the conſpiring to do either of theſe, is Treaſon within this Law, as aforeſaid; and that within this word *Compaſſing*; which, as I ſaid before, is of a very large extent, but

Nota.

I muſt

I muſt confeſs the *Intention* is not ſo bad as an actual *Levying of War*, and yet it is as bad in him that doth intend it. And this *Levying of War* doth mediately look at the perſon of the King, though not immediately; and ſo in that reſpect it is Treaſon, and ſo it is of depoſing; and ſo is the Statute of 1 *E.* 6. *cap.* 12. and ſo you ſhall find it in Doctor *Storie's* caſe, 13 *Eliz: Dyer* 298. *b.* who did conſpire with a Foreign Prince to invade this Land, and ſhewed him a means how to conquer this Kingdom, and yet there was no Act done by that Prince againſt the

1 E. 6. 12. *Dyer. Story's* Caſe. 13 *Eliz. Dyer* 298.

the Queen, yet this is adjudged Treaſon; and the reaſon there yielded, was, becauſe this Invaſion could not poſſibly be without great hazard and peril to the perſon of the Queen, which is a very full Caſe in proving of this point. But a conſpiring to *coyn Money*, is not Treaſon within this Law, becauſe it is not againſt the perſon of the King; but yet if two ſhall conſpire to *coyn Money*, and one doth it alone without the other, yet this is Treaſon in both. 19H.6.47.

The third point is, that *I. S.* after he became mad, kills the Queen, this is Treaſon

ſon within this Law; firſt, becauſe a man may counterfeit himſelf to be mad, and he may do it ſo cunningly as it cannot be diſcerned whether he be mad or no.

The ſecond Reaſon, is, in reſpect of the great eſteem that the Law gives to the perſon of the King; for he is the Fountain of Juſtice: and for the proof of this point, that it may be underſtood, we ought to ſee what the *Common Law* was, before the making of this Statute, as to this Point; and then we ought to enquire and ſee how the Law is altered ſince the making of the Statute; and by

by this means, we ſhall find out the Law and the reaſon thereof; it is true, that the Law, without ſpecial words, will not bind an Infant or a Mad-man, as to the puniſhment of their Bodies, but yet it will extend to their Lands and Eſtates; but this our Law is no new Law, but only a Declarative Law, and in that Caſe general words will bind an Infant or a Mad-man without any ſpecial words. That it was Treaſon at the Common Law is apparent in *Britton*, and the *Mirrour of Juſtice*; and this Statute doth not declare who ſhall be Traytors, but what

ſhall be Treaſon, and there-
fore by this Act it is Treaſon
in a Mad-man, or whomſo-
ever ſhall commit it; for a
Mad-man is not excepted out
of this Law: and to make
this appear more fully, you
may be pleaſed to read the
See Beverleys Caſe. Com. 124. Caſe of *Beverly*, in *Com.* 124.
That a man that is *non compos mentis* may commit High
Treaſon, although he can-
not commit Petty Treaſon,
nor Felony: and ſo it is al-
Dalton's Juſt. 206. ſo in *Dalton's Juſtice of Peace*
206. that if a man that is *non compos mentis*, ſhall kill the
King, this is High Treaſon.
Nay, *Beverley's* Caſe goes far-
ther, and ſayes, That if he
ſhal

ſhall offer only to kill the King, this is High Treaſon, becauſe the King is *Caput & ſalus Reipub. & à Capite bona valetudo tranſit in omnes*: and for this Cauſe his perſon is ſo Sacred, that none muſt offer the leaſt violence to him; but he is *Reus criminis læſæ Majeſtatis, & pereat unus, ne pereant omnes.* Nota.

The ſecond Concluſion, is, That *I. S.* is not a Traytor within this Law, for imagining the death of the Grandchild; yet he is within the Care and Protection of the Law; for he is not within the Words of the Law, but without the Intention and Reaſon

of the Law: for the words are, *That if any man ſhall compaſs the death of the Kings Eldeſt Son*, that is Treaſon; but in the *French* Language, in which this Law was firſt written, it is *Le Regne fils & heir*, and yet if the Eldeſt Son dyes, the ſecond Son is within the Law, becauſe he is then the Eldeſt Son; and ſo it is of the third Son, for then he is alſo Heir Apparent, and he is within the intention and meaning of this Law. And ſo to this purpoſe is the Princes Caſe in *Report* 8. where it is, that the Second Son ſhall be Duke of *Cornwal* after the death of the Eldeſt, and

Princes Caſe 8. Report.

and yet it is only limited to the Eldeſt Son. A collateral Heir is alſo within this Statute, becauſe, as he conceiveth, this Statute intends to provide that the next Heir to the Crown ſhall be ſecured from danger. And the Caſe that may be likened to this, is that, where a *Writ of Aid* may be brought by the next Heir; for the Writ ſaith, *Cujus hæres ipſe eſt*, *F. N. B.* 221. F.N.B.221 ſo that it appears, that it lies only for the Heir Lineal or Collateral, Male or Female.

The Eldeſt Daughter is alſo within our Law, *Heires Facus* is alſo a grand Heir within this Law; but this

imagining or *compaſſing the Death of the Grandchild*, or of any other Heir, is not Treaſon, unleſs there be a ſufficient Declaration of it to another: for no man can judge of the thoughts; for the *imagination* only can be no Overt Act: and this Declaration of his *imagination*, or *compaſſing* to *I. D.* is not a ſufficient Overt Act to make him a *Traytor* within this Law: for he told him that he had only ſuch an *imagination*, which is but *Primus motus*; for he doth not ſay that he will do it in the *Future Tenſe*, for that may be Treaſon, for that it doth imply an

an Act to be done afterward; but the other is onely against that is past. Then for violating the Wife after she is divorc'd, this is not Treason within this Law. And yet the divorce is but *a mensa & thoro*, but it is such a divorce as deprives her of his Company, and so she is not his Companion within this Law: but yet she is his Wife, and a Wife divorc't *a mensa & thoro* shall have her divorce; because that divorce doth not dissolve the Marriage, but she remains his Wife still; but yet if she hath any Children during that divorce, they are all

Baſtards, becauſe ſhe is not to keep her Husband Company. A Queen Dowager is not within this Law, becauſe ſhe is not *Companion* to the King; that then is, and is not provided for by this Law: for the words of the Statute are, *If any ſhall violate the Kings Companion.*

Lecture

Lecture II.

THE Second *Lecture*, according to my firſt *Diviſion* is concerning the *Government*; and that is, Firſt, in the *Seal*, which is *Clavis Regni*. The Second in his *Money* and *Coyn*. The Third, in his *Offices*. For the Firſt, which are the *Seals*; and they are, firſt, The *Great Seal*. Secondly, the *Privie Seal*. And, Thirdly, the *Seal of the Exchequer*. And of all theſe *Seals* the Common Law takes ſpecial notice, as that the

The Second Lecture.

the King may grant to one Power to make one Attorney under the *Privie Seale*; and so is 37 *H.* 3. 27. *b. Co.* 2. 17. *Lams* Case; and so of the other Seals: but our Law takes notice of the great Seal only as for point of *Treason*; for the words are exclusive to all other Seals; for that being the greatest, excludes all other inferior Seals that are the least. Now what shall be said of *counterfeiting of this Great Seal*? and that must be by making another Seal like to this, and for to Seal Patents with it: for, to make a Seal like the *Great Seal*, to put this to a piece of *Wax* onely, is

37 H. 3. 27. Co. 2. 17. *Lams* Case.

is no *counterfeiting of the Great Seal*; but there ought to be a Writing annexed unto it, and then it is a *Counterfeiting within this Law*: but if the Lord Keeper doth Seal a Patent without ſpecial Authority from the King, yet this is no *Counterfeiting within this Law*; or if any one do find this *Great Seal*, or other wayes obtain it, and Seals Patents therewith, this is not *Counterfeiting* neither, within this Law: for, if the Seal be truly and in due manner put to a Patent, and afterwards the Patentee doth raze or add to the Patent in any place, this is no *Counterfeiting* Nota.

Lakes Case 4 Jac. *feiting*, as it is in *Lakes* Case 4 *Jac.* and yet the razing of a Deed is the forging of a Deed.

Secondly, concerning *counterfeiting the Kings Coyn*; and this ought to be intended only of the Kings own Money, for that only is meant by this Law, and not any Foreign Money; but Foreign Money is provided for by another Law. The coyning of Copper, if it be made Currant, is also within this Law: for it is only in the power of the King to imbase Coyn, as it is apparent in the Case of Money in *Davices Reports*; for the King is Master of the Coyn:

Case of Money in *Davices* Reports.

Coyn: but in the *Mirrour of Juſtice*, it is ſaid the King cannot alter his coyn; for thoſe things are not in this Law, becauſe they are not Currant within this Realm. Foreign Money is not within this law, becauſe at the time when this Law was made, all Foreign Money that was brought into this Realm, was but Bullion; becauſe it was a great deal worſer than that of this Nation: and Foreigners afterwards did make their Coyn finer, and than it was made Currant here by a Statute, and ſo within this Law.

If any that have Authority and Power to Mint or Coyn,

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Coyn, and he coyn pieces that are leſs in weight than they ought to have been, by the Authority by him given, this is a *counterfeiting*, because he hath not purſued his Authority, and ſo is as if he had no Authority to make it of that weight, which he hath made it. And ſo is

3 H. 7. c. 10 the 3 *H.* 7. *c.* 10. to counterfeit Foreign Money, and to bring it over, is not a *counterfeiting* within this Law, but if one counterfeit the Coyn of this Kingdom beyond the Sea, and brings

6 H. 7. 13. over and Merchandizes with it, and thereby deceive our Merchants, this is a counterfeiting

feiting, as in the Book aforesaid. And if one counterfeit the Coyn of this Kingdom, although he doth not put it to others, yet this is a counterfeiting within this Law. *6 H.7.13. 1 H. 31. Bro. Tit. Treaſ. 27. Stamf. Pleas 3. D.*

1 R.3.1. Bro. Tit. Treaſ.27. Stam. pl.3. D.

What ſhall we ſay to the bringing in of Money, what not? the bringing in of Foreign Money, ought to be intended of Money that is *counterfeited* in another Realm, and like unto ours; for the words are ſo, *Money*, and not of *Foreigners Money*. If two conſpire to Coyn and Counterfeit, and one of them doth it,

19H.6.43. Stam.pl.3. it, it is *Treaſon* in both, 19 H. 6. 43. *Stamf. Pleas* 3. *a.* but an intention to counterfeit is not Treaſon within this Law.

The Barons of the *Exchequer* are within this Law, and it is agreed in *Tanfields* Caſe (who was one of the Barons of the *Exchequer*) that he was within the words of the Statute; and the words of *Oyer* and *Terminer* are within this Law, but all other Judges are not; as the Eccleſiaſtical Judges are not within this Law; for they hold with the Court of *Rome*, and did derive their Authority from him in ancient Time. Neither the

ther is a Conſtable within this Law.

The ſecond Caſe.

I. S. Slits the *Great Seal*, and cloſeth it to a *Commiſſion*, and coyns Money in the form of Shillings, *invertendo* the Arms, kills the *Lord Keeper* of the *Great Seal* in *Chancery*, and brings in falſe Money like *Engliſh*, to Merchandize, knowing it to be falſe, but doth not offer it, and *I. S.* knowing this doth ſuccour him. The ſecond Caſe.

The *Concluſion* is, that I. S. is a Traytor *in omnibus*, and I. D. alſo within this Law;

the first Act is slitting of the Seal, and putting of it to the *Commission*, and that is *Treason*; first, because that is slit, whereby it is become now no Seal at all; it cannot be said that this half is the *Broad Seal*, or that the other half is the *Broad Seal*; for they both together make but one *Broad Seal*; and when he hath closed them together again, and joyned them to a Commission, he hath made the Seal a new, for it was no Seal when it was slit, but now it is.

The second Reason is, in respect of the mischief that doth come by this translating

of

of an old Seal to a new Commiſſion; for both the King and his Subjects are as much abuſed, as if it had been counterfeited: and the Reaſon of Laws and not Authority ought to be our Rule to go by; for *judicandum eſt legibus, non exemplis*, and ſo he conceiveth the Caſe in *Bro. Tit. Treaſ.* 17. to be no grand Law. This was Treaſon alſo at Common Law, as you ſhall find it expreſt in *Britton, cap.* 4. *fol.* 10. and in the *Mirror of Juſtice cap.* 1. *ſect.* 6. and ſince the Statute in the ſame Kings time that this Statute was made in, and they who knew beſt the Reaſons and

40 *Aſſ.* 33. & *Bro. Tit. Treaſ.* 17. *Brit. cap.* 4. *fol.* 10.

Grounds of this Statute, and the meaning thereof, and were at the making thereof, by all likelihood, did adjudge it Treaſon, to take an old Seal from an old Patent, and to put it to a new one, as in 40 *Aſſ. pl.* 33. and 2 *H.* 4. 33. and *Stamford* ſaith, that it was ſo adjudged in his time.

40 *Aſſ. pl.* 33. & 2 *H.* 4. 33.

In all Treaſons that do concern the perſon of the King, the judgement ought to be, *That he ſhall be hanged, drawn, and quartered*; but for other Treaſons that do not immediately concern the perſon of the King, the judgment ought to be, *That he ſhall*

ſhall be drawn and hanged only; and not that he ſhall be *quartered*. As it is in 1 *H.6.5.* 19 *H. 6. 47.*

1 H. 6. 5.
19 H.6.47.
6 H.7. 13.

The ſecond Act is, *The Counterfeiting of the Kings Money, and the inverting of the Arms of the King, whereby the Kings Liege people and others may be deceived:* for that is a ſufficient Alteration to make it Treaſon, although it be ſuch a one as cannot be diſcerned without ſpecial notice taken of it. And this doth appear by the judgment given in the *Star-Chamber*, for the counterfeiting of Farthings. And it is Treaſon for any man to bear the

Kings Arms, as it appears in the Earl of *Surreys* Case.

The third Act is, *The killing of the Officers of the King*, as of the *Lord Keeper*, and that is Treason within this Law; for the *Lord Keeper* is now *Chancellor*, although at that time when this Statute was made, the *Lord Chancellors Office*, and the *Lord Keepers Office* were two several and distinct Offices, yet they are made now both one Office; and that is by the Statute of 5 *Eliz. cap.* 18. and this Statute of 15 *E.* 3. *cap.* 2. may and doth extend to that Statute of 5 *Eliz.* which comes after, as is very fully expres-

5 *Eliz. c.* 18
15 *E.* 3. *c.* 2

to

to the purpose, though not to this Case, in *Co.* 4. *fol.* 4. *Vernon's* Case, the Statute of *Marleborough*, which was made 52 *H.* 3. gave the word of the Tenant that held by Knight-service, notwithstanding he had made a Feoffment by collusion: from which time, and for 200 years and more, till the Statute of the 4. of *H.* 7. *cap.* 17. which gave the Ward of the Heir of *Costigase*, the Heir of *Costigase* was not in Ward, and yet it is held in the 27 of *H.* 8. 9. that if *Costigase*, after the Statute of 4 *H.* 7. makes a Feoffment in Fee by collusion, to defraud the Lord

of his Ward, that this is taken within the Equity of the Statute of *Marleborough*, and so of divers other Cases that you may see there cited in *Vernon*'s Case above mentioned.

The Fourth Act is, *The bringing in of false Money, like unto our* English *Money, for to Merchandize withal*; and this is Treason: for here is not only an intent, but there is also an Act joyned with this intent; for he brings over this Money, which is the Act, with an intent to Merchandize. The second Conclusion is, that *I. D.* is a Traytor within this Law, and his Treason

Treaſon doth go or extend to all the other four Treaſons that were committed by I. S. for this ſuccouring of him after the Fact committed, makes him a Traytor within this Law. And at the Common Law, before the making of this Statute, if a man had ſuccoured one that had committed Treaſon, knowing him to have committed it, he had been a Traytor. And ſo if one doth now ſuccour a Felon, it is Felony in the Succourer. And why ſhould it not be ſo in our Caſe? For the Reaſon of Law in our Caſe is far ſtronger, that the Succourer of a Traytor, ſhould be a

Tray-

Traytor; than the ſuccour-or of a Felon ſhould be a Fe-lon, becauſe the Offence is greater; and therefore it is an aggravation of his puniſh-ment, to make him that no man ſhall receive or ſuccour him: for we ſee the Law in-flicts a greater puniſhment upon a Traytor than upon a Felon; and that is to deter men from ſuch Acts as thoſe are. And ſo it appears that there is Reaſon why he ſhould be a Traytor, although he be not within the words of the Statute. And therefore it is in the Reaſon of the Statute. Another Reaſon is, becauſe the Statute doth not ſay who

ſhall

ſhall be Traytors, but what ſhall be Treaſon, and this word *Treaſon* ſhall be taken with all its Concomitants and Accidents, as it was at Common Law; and then that was a concomitant to Treaſon that the Succourer ſhould be a Traytor.

But it is ſo in 3*H.*7.*fol.* 10. that the Succourer in Treaſon is no Traytor. *Object.*

The Reaſon of that Caſe is, becauſe the Judgement was, that he knowing *eam proditionem prædictam perpetraſſe felonice hoſpitalis fuit*; and this was not grand, becauſe he was in that Caſe indicted as an Acceſſary, and *Anſw.*

was

was not indicted as a Traytor; for there can be no *Acceſſaries* in *Treaſons*, as there is in *Felonies*. See *Fitz. Tit. Cor.* 55. *Bro. Tit. Coron.* 135. and for expreſs Authority it is in 1 *H.* 6. 5. for if this Statute had made Felony Treaſon, and one doth commit that Treaſon, and *A.* ſuccours him, knowing of it, it had been abſurd for to have ſaid, that the Succourer ſhould have been only a Felon: but our Caſe is ſtronger; for this Law doth not make any one a Traytor, but only declares what ſhall be adjudged Treaſon; but if this Statute had expreſt, that all Abettors ſhould

Fitz. Tit. Coron. 55. *Bro. Tit. Coron.* 135.

ſhould have been Traytors, then the Receivers or Succourers ſhould not have been Traytors within this Law; for then the intent of the Makers would plainly appear, that it was not intended that the Receivers or Succourers after the Fact ſhould have been within this Law, but only the Abettors before and at the Fact.

Lecture

Lecture III.

THis *Lecture* is of *Petty Treason*, and Petty Treasons doth very little differ from Felonies; for by the pardon of all Felonies, all Petty Treasons are pardoned, *Stam. fol.* 2. *b*; but it hath some correspondency with other Treasons; and that is in respect of the Duty and Obedience that is due to each other; as it is from the Subjects to the King, so from the Servant to the Master. All Servants, although they

Stamf. fol. 2. *b.*

they receive no Wages, but only Meat and Drink, are within this Law. A Servant that is not compellable to ſerve by this Statute, yet if he doth ſerve, he is within this Law. And ſo is a Bayliff of a Mannor; for if he kill the Lord of the Mannor, it is *Petty Treaſon* within this Law. A Steward of a Court Leet or Court Baron is not within this Law. A Wife divorc'd for Adultery, is within this Law; although a Queen divorc'd for Adultery be not within this Law, as ye have heard before.

Ordinaries are of two ſorts, *Ordinarius loci*, *Ordinarius*

Ordinarius loci, Ordinarius Diocef.

rius Diocef. and the Superior Ordinaries they are all within this Law, *Ordinarius loci*, as that of the Dean of *Weſtminſter*. *Ordinarius Diocef.* is the Biſhop of the Dioceſs, and the Superior Ordinary is the Archbiſhop; they are all within this Law, in reſpect of Obedience that is due to them. A Child killing his Father or his Mother, he is within this Law, as you heard before, although his he be not named in it: yet there is a majority of Treaſon in it more than that of a Servant, and therefore is within that intent and reaſon of the Law. And ſo it is in

Dal-

Dalton; If one command another to kill his Master, who doth it, yet it is not Treason within this Law, unless he be there present when the Fact is done, 40 *Ass.* 25. If a Wife command a Servant to kill her Husband, and he doth it; it is Treason in both within this Law: and so it appears that Abettors and Partners are within the first Part of this Statute concerning *Petty Treasons*, although they are not named. If a Servant goes from his Master, and then kills him, this is *Petty Treason* within this Law; for it shall be intended that he had such an intention to kill him

40 *Ass.* 25.

before he departed out of his Service, 33 *Ass.* 7. And so is a Quarrel in *Westminster-Hall*, the Courts sitting, and then go out of the *Hall* into the *Pallace-yard*, and then one strikes the other, this is punishable with the same punishment, as if he had struck him in the *Hall*; for the punishment shall be to the loss of his hand, and the forfeiture of his goods, and perpetual imprisonment, as it is in *Darcies* Case, in the 1 & 2 of *Eliz. Dyer* 188. But some of these Offences were Treason at the Common Law, as the Son killing of the Father, 21 *E.* 3. 17. and of a Maid-servant

Bro. Tit. Treas. 15. 33 *Ass.* 7.

1 & 2 *Eliz. Dyer.* 188.

21 *E.* 3. 17.

ſervant killing her Miſtreſs, 21 *Aſſ.* 30. If a Servant kill his Miſtreſs, this is *Petty Treaſon* within this Law, and yet ſhe is not named, but is to be intended upon the ſame reaſon with his Maſter, and the Obedience is due to the one as well as the other, 19 *H.* 6. 37

21 *Aſſ.* 30.

19 *H.* 6. 37.

Treaſon ought to be fully proved, as it appears by the words of the Statute, and that is to be by two Witneſſes, for the proving of every Treaſon. And the Statute of 1 *E.* 6. is not repealed, as to this Point, by the Statute of *Phil.* and *Mar.* but only the Trials in the Counties, and not concerning Witneſſes, as by that

1 *E.* 6.

Statute more at large appears. And in the 14 of *Eliz.* in the Lord *Lumley's* Case, it was agreed, that the Statute 1 *E* 6. was not reversed by the old Statute. The Tryal of Lords of Parliament ought to be *per Pares*; but in some Cases he shall not have his Tryal *per Pares*, as in an Appeal, but in an Indictment he shall, and the Indictment shall be received into Parliament, because an Indictment is the Kings Suit; and the Statute of *Magna Charta* is *nec super eum ibimus, nec super eum mittimus*, and this is to be intended in the Kings suit, 10 *E.* 4. *b.*

14 *Eliz.* *Lumley's* Case.

13 H. 8. 11, 12. *Bro. Tit. Treas.* 29, 33.

10 *E.* 4. *b.*

But

But a Lord may refuſe his Tryal *per Pares*, if he will, as it was adjudged 1 *Phil. & Mar. Bro.* in the L. *Gray's* Caſe; but in the Lord of *Caſtlehaven's* Caſe it was held the contrary, *If a man be kill'd in Rebellion, he ſhall forfeit his Lands, and is a Traytor: but there ought to be an Inquiſition taken of him, and that ſhall be a ſufficient Tryal.* As the Caſe in 13 *Jac. Br.* If a man do caſt himſelf into the Water, and never is found after; yet if it be preſented by the Juſtice of Peace, this is ſufficient to make him forfeit his Goods.

1 *Phil. & Mar. Bro.* Lord *Grays* Caſe 13 *Jac.*

As for thoſe Treaſons which are not here declared, the

Judges

Judges Authority takes Indictments of them, but they ought not to be proceeded againſt to Judgment; for nothing is to be done in point of Judgement in ſuch a Caſe, till it be adjudged and declared in Parliament. And all other *Treaſons* that are not here declared, ought to be *Felonies* at the leaſt, becauſe *Felonies* were made *Treaſons* before the Statute; and becauſe the words of the Statute are, that it ought to be *Treaſon* or *Felony*: but if it be but once declared in Parliament, unleſs there be a *Proviſo* that the Judges ſhall not proceed upon the like Caſes, they may after-

afterwards proceed by force of this Statute.

There are *Treaſons* at the Common Law, notwithſtanding the Stat. of 1 *Mar.* for that did take away thoſe *Treaſons*, and Declarations of *Treaſons* that were made in Parliaments from the time of our Statute, to 1 *Mar.* but doth not take away the declarative Power in our Statute mentioned, nor the Common Law, but they do remain ſtill as before.

FINIS.

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Francis Bacon.

CASES OF TREASON.

CHAP. I.

WHERE a man doth compaſs or imagine the Death of the King, the King's Wife, the King's eldeſt Son, and Heir apparent, if it appear by any overt act, it is Treaſon.

Where a man doth violate the King's Wife, the King's eldeſt Daughtter, unmarried, the Wife

O

of the King's eldest Son, and Heir apparent, it is Treason.

Where a man doth levie War against the King in the Realm, it is Treason.

Where a man is adherent to the King's Enemies, giving them aid and comfort, it is Treason.

Where a man counterfeiteth the King's Great Seal, Privy Signet, Sign Manual, it is Treason: likewise his Money.

Where a man bringeth into this Realm false money, counterfeited to the likeness of English, with intent to merchandise or make payment thereof, and knowing it to be false money, it is Treason.

Where a man counterfeiteth any Coyn current in payment within this Realm, it is Treason.

Where

Where a man doth bring in any money, being current within the Realm, the ſame being falſe and counterfeit, with intent to utter it, and knowing the ſame to be falſe, it is Treaſon.

Where a man doth clip, waſte, round, or file any of the King's money, or any Foreign Coyn, current by Proclamation, for gain-ſake, it is Treaſon.

Where a man doth any way impair, diminiſh, falſifie, skale, or lighten money, current by Proclamation, it is Treaſon.

Where a man killeth the Chancellor, the Treaſurer, the King's Juſtices in *Eire*, the King's Juſtices of Aſsiſes, the Juſtices of *Oyer* and *Terminer*, being in their ſeveral Places and doing their Offices, it is Treaſon.

Where a man procureth or conſenteth to Treaſon, it is Treaſon.

Where a man doth perſuade or withdraw any of the Kings Subjects from his obedience, or from the Religion by his Majeſty eſtabliſhed, with intent to withdraw any from the Kings obedience, it is Treaſon.

Where a man is abſolved, reconciled, or withdrawn from his obedience to the King, or promiſeth obedience to any Foreign Power, it is Treaſon.

Where any Jeſuit, or any other Prieſt, ordained ſince the firſt year of the Reign of Qu. *Elizabeth*, ſhall come into, or remain in any part of this Realm, it is Treaſon.

Where any Perſon, being brought up in a Colledge of Jeſuits, or Seminaries, ſhall not return within ſix

six months after Proclamation made, and within two dayes after his return, submit himself to take the Oath of Supremacy; if otherwise he do return, and not within six months after Proclamation made, it is Treason.

Where a man, committed for Treason, doth voluntarily break Prison, it is Treason.

Where a Jaylor doth voluntarily permit a man committed for Treason, to escape, it is Treason.

Where a man relieveth or comforteth a Traitor, and knoweth of the Offence, it is Treason.

Where a man doth affirm or maintain any Authority of Jurisdiction Spiritual, or doth put in ure or execute any thing for the advancement or setting forth there-

of, the third time, it is Treason.

VVhere a man refuseth to take the Oath of Supremacy, being tendred by the Bishop of the Diocese, if he be any Ecclesiastical Person; or by Commission out of the Chancery, if he be a temporal Person; such Offence the second time is Treason.

CHAP. II.

The Punishment, Tryal, and Proceeding in Cases of Treason.

IN Treason, the Corporal Punishment is, by drawing on an hurdle from the place of the Prison to the place of Execution, by hanging and being cut down alive, bowelling, and quartering, and in VVomen burning.

In Treaſon there enſueth a corruption of blood in the Line aſcending and deſcending.

In Treaſon, Lands and Goods are forfeited, and Inheritance, as well intailed as Fee-ſimple, and the profits of Eſtates for Life.

In Treaſon, the Eſcheats go to the King, and not to the Lord of the Fee.

In Treaſon, the Land forfeited ſhall be in the Kings actual poſſeſſion, without Office.

In Treaſon there be no Acceſſaries, but all are Principals.

In Treaſon no Sanctuary, nor benefit of Clergy, or peremptory Challenge is allowed.

In Treaſon, if the Party ſtand mute, yet nevertheleſs Judgment and Attainder ſhall proceed all one as upon Verdict.

In Treason no Counsel is to be allowed, nor Bail permitted to the Party.

In Treason no Witnesses shall be received upon Oath for the Parties Justification.

In Treason, if the Fact be committed beyond the Seas, yet it may be tryed in any County where the King will award his Commission.

In Treason, if the Party be *non sanæ memoriæ*, yet if he had formerly confessed it before the Kings Council, and that it be certified that he was of good Memory at the time of his Examination and Confession, the Court may proceed to do Judgment without calling or arraigning the Party.

In Treason, the death of the Party before Conviction, discharget[h] all

all Proceedings and Forfeitures.

In Treaſon, if the Parties be once acquitted, he ſhould not be brought in queſtion again for the ſame Fact.

In Treaſon, no new Caſe, not expreſſed in the Statute of 25 *E.* 3. or made Treaſon by any ſpecial Statute ſince, ought to be judged Treaſon, without conſulting with the Parliament.

In Treaſon, there can be no Proſecution but at the King's ſuit, and the Kings Pardon diſchargeth.

In Treaſon, the King cannot grant over to any Subject Power and Authority to pardon it.

In Treaſon, a Trial of a Peer of the Kingdom is to be by ſpecial Commiſſion before the Lord high Steward, and thoſe that paſs upon him to be none but Peers: The Pro-

Proceeding is with great Solemnity, the Lord Steward sitting under a cloth of Estate, with a white rod of Justice in his hand, and the Peers may conferr together, but are not any ways shut up; and are demanded by the Lord Steward their Voices one by one, and the plurality of Voices carries it.

In Treason, it hath been an ancient Use and Favour from the Kings of this Realm, to pardon the Execution of hanging, drawing, and quartering; and to make Warrant for their beheading.

The Proceeding in case of Treason, with a common Subject, is in the Kings Bench, or by Commission of *Oyer* and *Terminer*.

CHAP.

CHAP. III.

Caſes of Miſpriſion of Treaſon.

WHere a man concealeth high Treaſon only, without any conſorting or abetting, it is miſpriſion of Treaſon.

Where a man counterfeiteth any Foreign Coyn of Gold or Silver, not current in this Realm, it is miſpriſion of Treaſon.

Where a man fixes an old Seal to a new Patent, it is miſpriſion of Treaſon.

CHAP. IIII.

The Puniſhment, Tryal and Proceeding in caſes of miſpriſion of Treaſon.

THE Puniſhment of Miſpriſion of Treaſon, is by perpetual Im-

Impriſonment, loſs of the Iſſues and Profits of their Lands during Life, and loſs of goods and Chattels.

The Proceeding and Trial is, as in caſes of High Treaſon.

In miſpriſion of Treaſon Bail is not admitted.

CHAP. V.

Caſes of Petty Treaſon.

WHere a Servant killeth his Maſter, the Wife the Husband, the Spritual man his Prelate, to whom he is ſubordinate, and oweth Faith and Obedience, it is pettie Treaſon.

Where a Son killeth the Father or Mother, it hath been queſtioned whether it be petie Treaſon, and the late

late experience and opinion ſeemeth to ſway to the contrary, tho againſt Law and Reaſon in my judgment.

Where a Servant killeth his or her Maſter or Miſtreſs, after they are out of Service, it is petie Treaſon.

CHAP. VI.

The Puniſhment, Tryal and Proceedings in caſes of Petie Treaſon.

IN Petie Treaſon, the Corporal Puniſhment is by drawing on an hurdle, and hanging, and in a Woman burning.

In petie Treaſon, the Forfeiture is the ſame with the Caſe of Felony.

In

In petie Treaſon, all Acceſſaries are but in caſe of Felony.

CHAP. VII.

Caſes of Felony.

WHere a man committeth Murder or Homicide, of Malice prepenſed, it is Felony:

Where a man committeth Murder (that is) breaking of an Houſe with an intent to commit Felony, it is Felony.

Where a man committeth manſlaughter, that is Homicide of ſudden heat, and not of Malice prepenſed, it is Felony.

Where a man rideth armed with a felonious intent, it is Felony.

VVhere a man doth malicioufly and

and felonioufly burn any man's houſe, it is Felony.

VVhere a man doth malicioufly, *&c.* burn corn upon the ground, or in ſtack, it is Felony.

VVhere a man doth malicioufly cut out another man's Tongue, or put out his Eyes, it is Felony.

VVhere a man robbeth or ſtealeth, *viz.* taketh away another man's Goods, above the value of 12 *d.* out of his poſſeſſion, with intent to conceal it, it is Felony.

VVhere a man imbezelleth and withdraweth any of the King's Records at *Weſtminſter*, whereby a Judgment is reverſed, it is Felony.

VVhere a man, having the cuſtody of the King's Armour, Munition, or other Abiliments of VVar, doth ma-

malicioufly convey away the ſame, it is Felony, if it be to the value of twenty ſhillings.

VVhere a Servant hath Goods of his Maſters delivered unto him, and goeth away with them, it is Felony.

VVhere a man conjures, or invokes wicked Spirits, it is Felony.

VVhere a man doth uſe or practiſe VVitchcraft, whereby any Perſon ſhall be killed, waſted, or lamed, it is Felony.

VVhere a man practiſeth any VVitchcraft, to diſcover Treaſure hid, or to diſcover ſtollen goods, or to provoke unlawful Love, or to impair or hurt any mans Cattel or Goods, the ſecond time, having been once before convicted of like offence, it is Felony.

VVhere

VVhere a man uſeth the craft of multiplication of Gold or Silver, it is Felony.

VVhere a man receiveth a Seminary Prieſt, knowing him to be ſuch a Prieſt, it is Felony.

VVhere a man taketh away a VVoman againſt her VVill, not claiming her as his VVard or Bondwoman, it is Felony.

VVhere a man or woman marrieth again, his or her former Husband or VVife being alive, it is Felony.

VVhere a man committeth Buggery with man or Beaſt, it is Felony.

VVhere any Perſons, above the number of twelve, ſhall aſſemble themſelves with intent to put down Incloſures, or bring down prices

of Victuals, *&c.* and do not depart after Proclamation, it is Felony.

Where a man shall use any words to encourage or draw any People together, *ut supra*, and they do assemble accordingly, and do not depart after Proclamation, it is Felony.

Where a man, being the King's sworn Servant, conspireth to murder any Lord of the Realm, or any Privy Councellor, it is Felony.

Where a Souldier hath taken any parcel of the King's wages, and departeth without Licence, it is Felony.

Where a Recusant, which is a Seducer, and Perswader, and Enticer of the King's Subjects against the King's authority in Ecclesiastical Causes, or a perswader of Conven-

venticles, or ſhall refuſe to abjure the Realm, it is Felony.

Where Vagabonds be found in the Realm, calling themſelves *Egyptians*, it is Felony.

Where a Purveyor doth take without Warrant, or otherwiſe doth offend againſt certain ſpecial Laws, it is Felony.

Where a man hunts in any Foreſt, Park, or Warren, by night or by day, with Vizard or other diſguiſements, and is examined thereof, and concealeth his Fact, it is Felony.

Where one ſtealeth certain kind of Hawks, it is Felony.

Where a man committeth Forgery the ſecond time, having been once before convicted, it is Felony.

Where a man tranſporteth Rams,

or other sheep out of the Kings Dominions, the 2d time, it is Felony.

Where a man being imprisoned for felony, breaks Prison, it is Felony.

Where a man procureth, or consenteth to Felony to be done, it is Felony, as to make him accessary before the Fact.

Where a man receiveth or relieveth a Felon, it is Felony, as to make him accessary after the Fact.

Where a Woman, by the constraint of her Husband, in his presence, joyneth with him in committing of Felony, it is not Felony in her, neither as Principal nor as Accessary.

Homicide, or the killing of a man, is to be considered in four kinds.
- *Chance-medley.*
- *Se defendendo.*
- *Man-slaughter.*
- *Wilful Murder.*

CHAP.

CHAP. VIII.

The Puniſhment, Tryal, and Proceedings in Caſes of Felony.

IN Felony, the corporal Puniſhment is hanging, and it is doubtful whether the King may turn it into beheading, in caſe of a Peer, or other Perſon of Dignity, becauſe in Treaſon, the ſtriking off the Head is part of the Judgment, and ſo the King pardoneth the reſt: but in Felony, it is no part of the Judgment, and the King cannot alter the execution of Law; yet Preſidents have been both wayes: If it be upon Indictment, the King may, but upon an Appeal he cannot.

In Felony there followeth corruption of Blood, except it be in cases made Felony by special Statutes, with a Proviso, that there shall be no corruption of blood.

In Felony, Lands in Fee simple, and goods and Chattels are forfeited, and the profits of Estates for Life are likewise forfeited, but not Lands intailed: and by some Customs, Lands in fee simple are not so forfeited;

The Father to the Bough,
The Son to the Plough,

as in *Gavel-kind* in *Kent*, and other places.

In Felony, the Escheats go to the Lord of the Fee, and not to the King, except he be Lord: But profits for the Estates for Lives, or in Tail, during the Life of Tenant in Tail,

Tail, go to the King; And the King hath likewise *annum, & diem, & vastum.*

In Felony, Lands are not in the King, before Office, nor in the Lord, before Entry or Recovery in a Writ of Escheat, or Death of the Party attainted.

In Felony, there can be no proceeding with the Accessary, before there be a proceeding with the Principal: If he dye, or plead his Pardon, or have his Clergy before Attainder, the Accessary can never be dealt with.

In Felony, if the Party stand mute, and will not put himself upon Tryal, or challenge peremptorily above that the Law allows, he shall have Judgment, not of hanging, but of penance, of pres-

sing to death; but there he saves his Lands, and forfeits only his Goods.

In Felony, at the Common Law, the benefit of Clergy or Sanctuary was allowed; but now by Stat. it is taken away in most cases.

In Felony, Bail may be admitted where the Fact is not notorious, and the Person not of ill name.

In Felony, no Councel is to be allowed to the Party, no more than in Treason.

In Felony, if the fact be committed beyond the Seas, or upon the Seas, *super altum mare*, there is no Tryal at all in one case, nor by course of Jury in the other, but by the Jurisdiction of the Admiralty.

In Felony, no witness shall be received upon Oath for the Parties Justification, no more than in Treason.

In

In felony, if the Party be *non sanæ memoriæ*, although it be after the fact, he cannot be tryed nor adjudged, except it be in course of Outlawry, and that is also erroneous.

In felony, the Death of the Party before Conviction, dischargeth all Proceedings and Forfeitures.

In felony, if the Party be once acquit, or in peril of Judgment of Life, lawfully he shall never be brought in question again for the same fact.

In felony, the prosecution may be either at the King's Suit, or by way of Appeal; the Defendent shall have his course, and produce Witnesses upon Oath, as in Civil Causes.

In Felony, the King may grant

hault

hault Justice to a Subject, with the Regality of Power to pardon it.

In Felony, the Tryal of Peers is all one, as in case of Treason.

In Felony, the Proceedings are in the King's Bench, or before Commissioners of *Oyer* and *Terminer*, or of Goal-delivery, and, in some case, before Justices of the Peace.

CHAP. IX.

Cases of Felony, de se, *with the Punishment, Tryal, and Proceedings.*

IN the Civil Law, and other Laws, they make a difference of Cases of Felony *de se*; for where a man is called in question upon any capital Crime, and killeth himself to prevent the Law, there they give the

the Judgment in all points of forfeiture, as if they had been attainted in their Life-time: And, on the other side, where a man killeth himself upon impatience of sickness, or the like, they do not punish it at all: but the Law of *England* taketh it all in one degree, and punisheth onely with loss of Goods, to be forfeited to the King, who generally grants them to his Almoner, where they be not formerly granted unto special Liberties.

CHAP. X.

Cases of Premunire.

WHere a man purchaseth, or accepteth any provision, that is, collation of any Spiritual Bene-

Benefice or Living from the See of *Rome*, it is Premunire.

Where a man ſhall purchaſe any Proceſs to draw any People of the Kings Allegiance out of the Realm, in plea whereof the cognizance pertains to the Kings Court, and cometh not in Perſon to anſwer his contempt in that behalf, before the King and his Council, or in his Chancery, it is Premunire.

Where a man doth ſue in any Court which is not the King's Court, to defeat or impeach any Judgment given in the Kings Court, and doth not appear to anſwer his Contempt, it is Premunire.

Where a man doth purchaſe, or purſue in the Court of *Rome* or elſewhere, any Proceſs, Sentence of

of Excommunication, Bull, or Inſtrument, or any other thing which toucheth the King in his Regality, or his Realm, in prejudice, it is Premunire.

Where a man doth affirm or maintain any Foreign kind of Juriſdiction Spiritual, or doth put in ure or execution any thing for the advancement or ſetting forth thereof; ſuch Offence the ſecond time committed, is Premunire.

Where a man refuſeth to take the Oath of Supremacy, being tendred by the Biſhop of the Dioceſe, if it be an Eccleſiaſtical Perſon; or by a Commiſſion out of the Chancery, if he be a Temporal Perſon, it is premunire.

Where a Dean and Chapter of any Church upon *the Conge de Lier*

Lier of an Archbishop or Bishop, doth refuse to elect any such Archbishop or Bishop, as is nominated unto them in the Kings Letters missive, it is Premunire.

Where a man doth contribute, or give relief to any Jesuit or Seminary Priests, or to any Person brought up therein, and called home, and not returning, it is case of Premunire.

Where a man is a Broker of an usurious contract above ten in the hundred, it is Premunire.

CHAP. XI.

The Punishment, Tryal, and Proceeding in Cases of Premunire.

THe Punishment is by Imprisonment during Life, forfeiture,

ture of Goods, forfeiture of Lands in fee simple,& forfeiture of the profits of Lands Intailed, or for Life.

The Trial and Proceeding is as in cases of Misprision of Treason, and the Tryal is by Peers, where a Peer of the Realm is the Offender.

Striking any man in the face of the King's Courts, is forfeiture of Lands, perpetual Imprisonment, and loss of that hand.

CHAP. XII.

Cases of Abjuration and Exile, and the Proceedings therein.

WHere a man committeth any Felony, for the which at this day he may have priviledge of Sanctuary, and confesseth the Felony before

before the Coroner, he ſhall abjure the Liberty of the Real, and chuſe his Sanctuary; and if he commit any new offence, or leave his Sanctuary, he ſhall loſe the Priviledge thereof, and ſuffer as if he had not taken Sanctuary.

Where a man not coming to the Church, and being a Popiſh Recuſant, doth perſwade any the Kings Subjects to impugn his Majeſties Authority in Cau'es Eccleſiaſtical, or ſhall perſwade any Subject to come to any unlawful Conventicles, and ſhall not after conform himſelf within a time, and make his ſubmiſſion, he ſhall abjure the Realm, and forfeit his Goods and Lands during Life; and if he depart not within the time prefixed,

or

or return, he ſhall be in the degree of a Felon.

Where a man, being a Popiſh Recuſant, and not having Lands to the value of 20 Marks *per annum*, nor goods to the value of 40 *l.* ſhall not repair to his dwelling, or place where he was born, and there confine himſelf within the compaſs of five miles, he ſhall abjure the Realm; and if he return, he ſhall be in caſe of a Felon.

Where a man kills the King's Deer in Chaſes or Foreſts, and can find no Sureties after a years Impriſonment, he ſhall abjure the Realm.

Where a man is a Treſpaſſer in Parks, or in Ponds of fiſh, and after three years Impriſonment cannot find Sureties, he ſhall abjure the Realm.

Where a man is a Raviſher of any Child, whoſe Marriage belongs to any Perſon, and marrieth the ſaid Child after years of conſent, and is not able to ſatisfie for the Marriage, he ſhall abjure the Realm.

CHAP. XIII.

Caſes of Hereſie, and the Trial and Proceedings therein.

THE Declaration of Hereſie, and likewiſe the Proceedings and Judgment upon Hereticks, is, by the Common Laws of this Realm, referred to the Juriſdiction Eccleſiaſtical, and the Secular Arm is reached to them by the Common Laws, and not by any Statute for execu-

execution of them by the Kings Writ *de Hæretico comburendo.*

CHAP. XIV.

The Kings Prerogative in Parliament.

THE King hath an abſolute negative Voice to all Bills that paſs the Parliament, ſo as without his Royal Aſſent they have a meer nullity, and not ſo much as *Autoritas præſcripta*, or *Senatus conſulta* had, notwithſtanding the Interceſſion of Tribunes.

The King may ſummon Parliaments, diſſolve them, prorogue them, and adjourn them at his Pleaſure.

The King may add Voices in the

Parliament at his Pleaſure, for he may give Priviledge to Borough Towns as many as he will, and may likewiſe call and create Barons at his pleaſure.

No man can ſit in Parliament except he take the Oath of Allegiance.

CHAP. XV.

The Kings Prerogative in matters of War or Peace.

THE King hath power to declare and proclaim War, and to make and conclude Peace and Truce at his pleaſure.

The King hath power to make Leagues and Confederacies with Foreign States, more ſtraight and leſs

leſs ſtraight, and to revoke and diſannull them at his pleaſure.

The King hath power to command the Bodies of his Subjects for the ſervice of his Wars, and to muſter, train, and levy men, and to tranſport them by Sea or Land at his pleaſure.

The King hath power in time of War to execute Marſhal Law, and to appoint all Officers of War at his pleaſure.

The King hath power to grant his Letters of Mart and Repriſal for remedy to his Subjects upon foreign wrongs at his pleaſure.

The King hath power to declare Laws by his Letters Patents for the government of any place conquered by Arms, at his pleaſure.

The King may give Knight-hood,

and thereby inable any Subject to perform Knights Service at his pleasure.

CHAP. XVI.

The Kings Prerogative in matters of Moneys.

THE King may alter his Standard in baseness or fineness of his Coyn, at his pleasure.

The King may alter his stamp in form at his pleasure.

The King may alter the valuations of his Coyn, and raise and fall Moneys at his pleasure.

The King by his Proclamation may make Moneys of his own current, or not current, at his pleasure.

The

The King may take or refuſe the Subjects Bullion, and Coyn, more or leſs money.

The King by his Proclamation may make Foreign money current, or not current.

CHAP. XVII.

The Kings Prerogative in matters of Trade and Traffick.

THE King may conſtrain the Perſon of any of his Subjects not to go out of the Realm at all.

The King may reſtrain any of his Subjects to go out of the Realm into any ſpecial Part foreign.

The King may forbid the exportation of any Commodities out of the Realm.

The King may forbid the importation of any Commodities into the Realm.

The King may ſet a reaſonable Impoſt upon any Foreign Wares that come into the Realm, and ſo of Native Wares that go out of the Realm.

CHAP. XVIII.

The Kings Prerogative in the Perſons of his Subjects.

THE King may create any Corporation or Body Politick, and enable them to purchaſe, and grant, and to ſue, and be ſued, and that

that with ſuch reſtrictions and modifications as he pleaſes.

The King may denizen and enable any Foreigner for him and his Deſcendents after the Charter, though he cannot naturalize nor enable him to make pedegree from Anceſtors Paramount.

The King may enable any attainted Perſon (by his Charter of Pardon) to purchaſe and to purge his Blood for the time to come, though he cannot reſtore his Blood for the time paſt.

The King may enable any dead Perſon in Law, as men profeſſed, to take and purchaſe to the King's Benefit.

CHAP.

CHAP. XIX.

An Answer to the Question proposed by Sir Alexander Hay *Knight, touching the Office of Constables.*

TO the first; Of the Original of the Authority of Constables, it may be said, *Caput inter nubila condit*, for the Authority was granted upon the Ancient Laws and Customes of this Kingdom, practised long before the Conquest, and intended and instituted for the conservation of the Peace, and repressing all manner of disturbance and hurt of the People, and that as well by way of prevention as punishment; but yet so, as they have no Judicial power,

to hear and determine any cauſe, but onely a Miniſterial power, as in the anſwer of the ſeventh Article more at large is ſet down.

As for the Office of the High Conſtable, the original of that is yet more obſcure; for though the High Conſtables Authority hath the more ample Circuit, he being over the hundred, and the pety Conſtable over the Village; yet I do not find that the pety Conſtable is ſubordinate to the High Conſtable, or to be ordered or commanded by him: and therefore, I doubt, the High Conſtable was not *ab origine*, but that when the buſineſs of the Countrey increaſed, the Authority of the Juſtices of Peace was inlarged by divers Statutes; then, for conveniency ſake, the Office

fice of High Constables grew in use for the receiving of the Commands and Precepts from the Justices of Peace, and distributing them to the petie Constables; and in token of this, the Election of High Constables in most parts of the Kingdom is by the appointment of the Justices of Peace, whereas the election of the pety Constable is by the People.

But there be two things unto which the Office of Constable hath special reference, and which of necessity, or at least a kind of congruity, must precede the Jurisdiction of that Office, either the things themselves, or somewhat that hath a similitude or analogy towards them.

1. The one is the division of the Territory, or gross of the Shires into

to Hundreds, Villages, and Towns; for the High Conſtable is Officer over the Hundred, and the pety Conſtable is over the Town or Village.

2. The other is the Court Leet, unto which the Conſtable is a proper Attendant and Miniſter, for there the Conſtables are choſen by the Jury, there they are ſworn, and there that part of their Office which concerneth Information, is principally to be performed; for the Jury is to preſent Offences, and the Offenders are chiefly to take light from the Conſtables, of all matters of Diſturbance and Nuſance of the People, which they (in reſpect of their Office) are preſumed to have beſt and moſt particular knowledge of.

CHAP.

CHAP XX.

Three ends of the Institution of the Court Leet.

1. THe first end of the Institution of the Court Leet is, To take the Oath of Allegiance of all Males above the Age of twelve years.

2. The second, To enquire of all offences against the peace; and for those that are against the Crown and Peace both, to enquire of onely, and certifie to the Justices of Goal Delivery; but those that are against the peace simply, they are to enquire and punish.

3. The third is, To enquire of, punish, and remove all publick Nu-

Nuſances and grievances, concerning Infection of Air, corruption of Victuals, eaſe of chaffer, and contract, of all other things that may hurt or grieve the people in general, in their health, quiet, and welfare.

And to theſe three ends, as matters of policy ſubordinate, the Court Leet hath power to call upon the pledges that are to be taken for the good behaviour of the Reſidents that are not Tenants, and to enquire of all Defaults of Officers, as Conſtables, Ale-taſters, *&c.* and for choice of Conſtables, as aforeſaid.

The Juriſdiction of theſe Leets is ever remaining in the King, and in that caſe exerciſed by the Sheriff in his turn, which is the grand

Leet,

Leet granted over to Subjects; but yet it is still the Kings Court.

2. To the second, as was said, The Election of the pety Constable is at the Court Leet, by the Inquest that makes the Presentments; the Election of the Head Constables is by the Justices of the Peace at their Quarter Sessions.

3. To the third, The Office is annual, except they be removed.

4. To the fourth, They be men (as it is now used) of inferiour, yea, of base condition, which is a meer abuse or degenerating from the first Institution; for the pet Constables in Towns ought to b of the better sort of Resiants in to said Town, save that they ought not to be Aged, or sickly, but men o able Bodies, in respect of keeping Watch,

Watch, and toil of their place, neither ought they to be in any mans Livery: And the High Conſtables ought to be of the ableſt ſort of Freeholders, and of the ſubſtantialleſt ſort of Yeomen, next to the degree of Gentlemen; but they ought to be ſuch as are not incumbred with any other Office, as Mayor, Underſheriff, Bailiff, &c.

5. To the fifth, They have no allowance, but are bound by Duty to perform their Offices *gratis*, which may the rather be endured, becauſe it is but Annual, and they are not tyed to keep or maintain any Servants, or under-miniſters, or that every one of the King's People are bound to aſſiſt them.

6. To the ſixth; Upon complaint made (of his refuſal) to any

one Justice of Peace, the said Justice may bind him over to the Sessions, where (if he cannot excuse himself by some just allegation) he may be fined and imprisoned for his Contempt.

7. To the seventh, The Authority of Constables, as it is substantive, and of it self, or substituted and astricted to the Warrants and Commands of the Justices of Peace; so again, it is Original or Additional; for either it was given them by the Common Law, or else annexed by divers Statutes. And as for subordinate Power, wherein the Constable is onely to execute the Commandments of the Justices of Peace, and likewise the additional power which is given by divers Statutes, it is hard to comprehend them

them in any brevity; For that they do correspond to the Office and Authority of the Justices of Peace, which is very large, and are created by the branches of several Statutes, which are things of divers and dispersed natures: But for the original and substantive Power of a Constable, it may be reduced to three heads.

1. For matter of Peace only.

2. For matter of Peace and the Crown.

3. For matter of Nusance, Disturbance, and Disorder, although they be not accompanied with violence and breach of Peace.

For pacifying of Quarrels begun, the Constables may, upon hot words given, or likelihood of breach of peace to ensue, command them

in the Kings name to keep the Peace, and to depart, and forbear: and ſo he may where an Affray is made, part the ſame, and keep the Parties aſunder, and arreſt, and commit the Breakers of the Peace, if they will not obey, and call Power to aſſiſt him for the ſame purpoſe.

For puniſhment of breach of Peace paſt, the Law is very ſparing in giving any Authority to Conſtables, becauſe he hath no power judicial, and the Uſe of his Office is rather for preventing or ſtaying of Miſchief, than for puniſhing of Offences; for in that part he is rather to execute the Warrants of the Juſtices, or when ſuddden matter ariſeth upon his view, or notorious circumſtances, to apprehend Offenders, and carry them before

fore the Juſtice of Peace, and generally to impriſon in like caſes of neceſſity, where the caſe will not endure the preſent carrying before the Juſtices. And thus much for the matters of Peace.

For matters of the Crown, the Office of the Conſtable conſiſteth chiefly in four parts.

1. The firſt is Arreſt.
2. The ſecond is Search.
3. The third is Hue and Cry.
4. And the 4th is Seiſure of goods.

All which the Conſtable may perform of his own Authority, without any Warrant of the Juſtices of Peace.

1. For firſt, If any man will lay Murder or Felony to another's charge, or do ſuſpect him of Murder or Felony, he may declare it to

the Conſtable, and the Conſtable ought, upon ſuch Declaration or Complaint, carry him before a Juſtice, and if by common voice or Fame any man be ſuſpected, the Conſtable, of Duty, ought to arreſt him, and bring him before a Juſtice, though there be no other accuſation.

2. If any houſe be ſuſpected for the receiving or harbouring of any Felon, the Conſtable, upon complaint, or common fame, may ſearch.

3. If any fly upon the Felony, the Conſtable ought to raiſe Hue and Cry, and ſearch for his goods, and keep them ſafe without impairing, and to inventary them in the preſence of honeſt neighbours.

4. For matters of common Nuſance

ſance and grievance, they are of a very variable nature, according to the ſeveral comforts which mans Life and Society requireth, and the contraries which infeſt the ſame.

In all which, be it matter of corrupting Air, Water, or Victuals, or ſtopping, ſtraitning, or indangering paſſage, or general deceits in Weights, Meaſures, Sizes, or counterfeiting Wares, and things vendible; the Office of the Conſtable is to give (as much as in him lies) Information of them, and of the offenders in Leets, that they may be preſented. But becauſe Leets are kept but twice in the year, and many of theſe things require preſent or ſpeedy remedy, the Conſtable, in things of notorious and vulgar nature, ought to forbid and re-

preſs them in the mean time.

8. To the eighth, They are for their Contempt to be fined and impriſoned by the Juſtices in their Seſſions.

9. To the ninth: The Oath they take is in this manner.

YOU ſhall ſwear, that you ſhall well and truly ſerve the King, and the Lord of this Law-day; and you ſhall cauſe the Peace of our Lord the King to be well and duely kept, to your power: And you ſhall arreſt all thoſe that you ſee committing Riots, Debates, and Affrayes in breach of Peace: And you ſhall well and duely endeavour your ſelf to your beſt knowledge, that the Statutes of Winchester *for Watch, Huy and Cry, and the Statutes made for the puniſhment*

of

of sturdy Beggars, Vagabonds, Rogues, and other idle Persons, coming within your Office, be truly executed, and the Offenders punished: And you shall endeavour, upon complaint made, to apprehend Barreters and riotous Persons, making Affrays, and likewise to apprehend Felons; and if any of of them make resistance with force, and multitude of mis-doers, you shall make Out-cry, and pursue them till they be taken; and shall look unto such Persons as use unlawful Games; and you shall have regard unto the maintenance of Artillery; And you shall well and duely execute all Proces and Precepts sent unto you from the Justices of Peace of the County; and you shall make good and faithful presentments of all Blood-sheds, Out-cries, Affrays, and Rescues made within

within your Office; and you ſhall well and duely, according to your Power and knowledge, do that which belongeth to your Office of Conſtable, to do for this year to come. So help *&c.*

10. To the tenth, The Authority is the ſame in ſubſtance, differing onely in extent; The pety Conſtable ſerving onely for for one Town, Pariſh, or Borough, the Head Conſtable ſerving for the whole Hundred; Neither is the pety Conſtable ſubordinate to the Head Conſtable for any commandment that proceeds from his own Authority, but it is uſed, that the Precepts of the Juſtices be delivered unto the High Conſtables, who being few in number, may better attend the Juſtices, and then the Head Conſtables by vertue thereof, make

make their Precepts over to the petty Constables.

11. To the eleventh, In case of necessity he may appoint a Deputy, or in default thereof, the Steward of the Court Leet may; which Deputy ought to be sworn.

Now to conclude, the Office of Constables consists wholly in these three things; *viz.*

Their Office concerning

1. The conservation of the Peace.
2. The serving the Precepts and Warrants of the Justices.
3. Their attendance for the execution of Statutes.

CHAP.

CHAP. XXI.

Of the Jurisdiction of Justices Itinerantes in the Principality of Wales.

THese Justices have power to hear and determine all criminal Causes, which are called, in the Laws of *England*, *The Pleas of the Crown*; and herein they have the same Jurisdiction that the Justices have in his Majesties Bench, commonly called the Kings Bench.

They have Jurisdiction to hear and determine all civil Causes, which are called in the Laws of *England*, Common Pleas; and do take knowledgement of all Fines, levied of Lands or Hereditaments, with-

without ſuing out any *Dedimus poteſtatem*; and herein they have the ſame Juriſdiction that the Juſtices of the Common Pleas do execute at *Weſtminſter*.

Alſo they may hear and determine all Aſſiſes upon Diſſeiſins of Lands or Hereditaments, wherein they equal the Juriſdiction of the Juſtices of the Aſſize.

Juſtices of *Oyer* and *Terminer* may hear and determine all notable Violences and Outrages perpetrated or done within their ſeveral Precincts of the Principality of *Wales*.

In the Kings Gift are,

1. The Prothonotory, his Office is to draw all Pleadings, and to enter and engroſs all Records

cords and Judgments in civil Causes.

2. The Clerk of the Crown, his Office is to draw and engross all Proceedings, Arraignments, and Judgments in criminal causes.

In the disposing of the Judge.

1. The Marshal, whose Office is to attend the Persons of the Judges at their coming, sitting, and going from the Sessions or Court.

2. The Crier, He is, *tanquam publicus Præco*, to call forth such Persons whose appearances are necessary, and to impose silence to the People.

There is a Commission under the great Seal of *England*, to certain Gentlemen, giving them power to

pre-

preſerve the Peace, and to reſiſt and puniſh all turbulent Perſons, whoſe miſdemeanours may tend to the diſquiet of the People; and theſe be called the Juſtices of the Peace, and every of them may well and truly be called and termed *Eirenarcha.*

The chief of them is called *Cuſtos Rotulorum,* in whoſe cuſtody all the Records of their Proceedings are reſident.

Others there are of that number called Juſtices of Peace and *Quorum,* becauſe in their Commiſſion they have power to ſit and determine Cauſes concerning breach of Peace, and misbehaviour; the words of their Commiſſion are conceived thus, *Quorum,* ſuch and ſuch, *unum vel duos, &c. eſſe volumus*; and without

out some one or more of them of the *Quorum*, no Sessions can be holden: And for the avoiding of a superfluous number of such Justices (for through the Ambition of many, it is counted a credit to be burthened with that Authority) the Statute of 38 *Hen.* 8. hath expressly prohibited, that there shall be but eight Justices of Peace in every County. These Justices, being appointed by the Lord Keeper, do hold their Sessions quarterly.

In every Shire, where the Commission of the Peace is established, there is a Clerk of the Peace, for the Entring and Engrossing of all Proceedings before the said Justices. And this Officer is appointed by the *Custos Rotulorum.*

Every

Every Shire hath its Sheriff, which word being of the Saxon Engliſh, is as much to ſay, as *Shire Reeve*, or Miniſter of the County: His Function or Office is twofold.

1. Miniſterial.
2. Judicial.

As touching his Miniſterial Office, he is the Miniſter and Executioner of all the Proceſs and Precepts of the Courts of Law, and thereof ought to make Return and certificate. 34 *H.* 8. *c.* 16.

As touching his Judicial Office, he hath Authority to hold two ſeveral Courts of diſtinct natures: The one called the *Tourne*, becauſe he keepeth his turn and circuit about the Shire, and holdeth the ſame Court in ſeveral places, wherein he doth enquire of all

Offences perpetrated against the Common Law, and not forbidden by any Statute, or Act of Parliament; and the Jurisdiction of this Court is derived from Justice distributive, and is for criminal offences, and is held twice every year.

The other is called the County Court, wherein he doth determine all petty and small Causes civil, under forty shillings, arising within the said County, and thereof it is called the County Court.

The jurisdiction of this Court is derived from Justice Commutative, and is held every Month: The Office of the Sheriff is annual, and in the Kings gift, whereof he is to have a Patent.

Every

Every Shire hath an Officer called an Eſcheator, which is an Office to attend the Kings Revenue, and to ſeize into his Majeſties hands all Lands, either eſcheated Goods, or Lands forfeited, and therefore is called Eſcheator; And he is to inquire, by good Inqueſt, of the death of the King's Tenants, and to whom their Lands are deſcended, and to ſeize their Bodies and Lands for Ward, if they be within age, and is accountable for the ſame; and this Officer is named by the Lord Treaſurer of *England*.

There are in every Shire two other Officers, called Crowners, or Coroners: they are to enquire by Inqueſt, in what manner, and by whom every Perſon dyeth of a violent death, and to enter the ſame

of Record, which is matter criminal, and a Plea of the Crown, and therefore they are called Coroners, or Crowner as one hath written, because their enquiry ought to be publick, *in corona populi.* 34 *H.* 8. 20.

These Officers are chosen by the Free-holders of the Shire, by vertue of a Writ out of the Chancery, *De Coronatore elegendo* : And of them I need not to speak more, because these Officers are in use elsewhere.

Forasmuch as every Shire is divided into Hundreds, it is also by the said Statute of 34 *H.* 8. *cap.* 26. ordered, that two sufficient Gentlemen, or Yeomen, shall be appointed Constables of every Hundred.

Also

Alſo there is in every Shire one Goal, or Priſon, appointed for the reſtraint of Liberty of ſuch Perſons as for their offences are thereunto committed, until they ſhall be delivered by courſe of Law.

In every Hundred of every Shire, the Sheriff thereof ſhall nominate ſufficient Perſons to be Bailiffs of that Hundred, and Under-miniſters of the Sheriff; and they are to attend upon the Juſtices in every of their Courts and Seſſions.

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